

**IN THE UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF TENNESSEE**

In re

NAKISHA MICHELLE DOWLEN-  
CABKNOR

Case No. 10-06109-KML  
Chapter No. 13

**EMC MORTGAGE LLC F/K/A EMC MORTGAGE CORPORATION'S MOTION TO  
REDACT AND RESTRICT PUBLIC ACCESS TO CONSUMER INFORMATION  
PURSUANT TO  
11 U.S.C. § 107 AND BANKRUPTCY RULE 9037**

Pursuant to sections 105(a) and 107(c) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9037 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and local Rule 9037-1, EMC Mortgage LLC f/k/a EMC Mortgage Corporation hereinafter “EMC”), by and through its undersigned counsel, hereby moves this Court, for entry of an order (the “Order”), substantially in the form attached hereto as Exhibit A (i) directing the Clerk of the Court to restrict remote electronic access to the Filing (as defined below) to protect certain personally identifiable information (“PII”) contained therein, and (ii) authorizing EMC to make a Replacement Filing (as defined below). In support of this motion (the “Motion”), EMC respectfully states as follows:

**FACTUAL BACKGROUND**

1. EMC takes very seriously the need to protect its customers’ PII and its obligations under Bankruptcy Rule 9037. EMC and its outside law firm believed in good faith that sensitive PII had been redacted in compliance with Bankruptcy Rule 9037 prior to docketing the filing at

Claim No. 8-1 in the above-captioned proceeding (the “Filing”). However, EMC has learned that certain PII can be revealed in the document.

2. EMC is not aware of any instance in which the PII contained in the Filing has been misused. By this Motion, EMC is taking steps to reduce potential exposure by permanently restricting access to the Filing, and by filing a redacted document that conceals any PII in the Filing (the “Replacement Filing”).

### **BASIS FOR RELIEF REQUESTED**

#### **A. Cause Exists to Restrict Access to the Filing and to Authorize EMC to File the Replacement Filing**

3. Bankruptcy Rule 9037(d)(2) provides, in relevant part, that “[f]or cause, the court may by order in a case under the Code: ... (2) limit or prohibit a nonparty’s remote electronic access to a document filed with the court.” Fed. R. Bankr. P. 9037(d)(2). Further, section 105(a) of the Bankruptcy Code provides, in relevant part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11].” 11 U.S.C. § 105(a). See also 11 U.S.C. § 107(c) (“the bankruptcy court, for cause, may protect an individual ... to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual’s property”).

4. EMC respectfully submits that cause exists to grant the relief requested herein. It is in the best interests of all parties in interest, including, most notably, the affected debtor, that access to the Filing be restricted to protect any PII from being misappropriated. EMC respectfully submits that this is the very type of situation that section 107(c) of the Bankruptcy Code and Bankruptcy Rule 9037(d) were enacted to protect against.

5. EMC also requests authority to file the Replacement Filing, in the form attached hereto as Exhibit B. The Replacement Filing is substantively identical to the Filing in all

respects, except for the removal of any imperfectly redacted PII. As set forth above, EMC has taken steps to ensure the Replacement Filing complies with Bankruptcy Rule 9037(a). These steps to ensure compliance with Rule 9037(a) do not change the substance of the document; rather, they serve as a means to protect the privacy of the debtor's PII.

6. EMC respectfully requests that access to the Filing be granted upon request in person at, or by writing addressed to, the Clerk of the Court's office, to: (a) the United States Trustee for Region 8, (b) the person(s) whose sensitive PII was imperfectly redacted in the respective Filing ("Designated Person"), (c) counsel for the Designated Person, and (d) the respective private trustee appointed to serve in that capacity in the Designated Person's bankruptcy.

7. EMC further requests that the Replacement Filing be deemed to have been filed, for all purposes, on the date the respective Filing was originally filed to ensure that EMC is not prejudiced in any manner – for example, with respect to determining whether a proof of claim was timely filed – as a result of the subsequent filing.

8. In connection with the filing of this motion, EMC will send a notice to the debtors, offering them the option of signing up for one year of free credit monitoring.

**WHEREFORE**, EMC respectfully requests that the Court enter an Order, substantially in the form attached hereto as Exhibit A, (i) directing the Clerk of the Court to permanently restrict remote electronic access to the Filing, (ii) authorizing the filing of the Replacement Filing, and (iii) granting such other and further relief as the Court deems appropriate.

Dated: June 3, 2015

Respectfully submitted,

Shapiro & Ingle, LLP

/s/ Sharon Fewell

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Sharon Fewell

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*Counsel to EMC Mortgage f/k/a EMC Mortgage  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing and annexed pleading or paper upon:

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by depositing the same in a postpaid wrapper properly addressed to each such party or his attorney of record in a post office or other official depository under the exclusive care and custody of the United States Postal Service and/or by electronic mail, if applicable. This the 3<sup>rd</sup> day of June, 2015.

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